

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

11	WILLIAM L. TEAFORD and CARLETA A.)	
12	TEAFORD, husband and wife,)	NO. CV-05-3027-MWL
13	Plaintiffs,)	
14	vs.)	ORDER GRANTING DEFENDANTS'
15	CITY OF SELAH, a municipal)	MOTION TO COMPEL INITIAL
16	corporation, ROBERT L. JONES and)	DISCLOSURES
17	JANE DOE JONES, husband and wife)	
18	and the martial community thereof,)	
19	JERRY DAVES and JANE DOE DAVIS,)	
20	husband and wife and the marital)	
21	community thereof, and FRANK)	
22	SWEET and JANE DOE SWEET, husband)	
23	and wife and the marital community)	
24	thereof,)	
25	Defendants.)	

On October 11, 2005, Defendants moved for an order to compel further Fed. R. Civ. P. 26(a)(1) initial disclosures from Plaintiffs or sanctions amounting to dismissal of Plaintiffs' claim for Plaintiffs' failure to provide complete initial disclosures. (Ct. Rec. 20). At the hearing on the motion, counsel for Defendants did not request dismissal of Plaintiffs' complaint (nor does the Court believe that such a proposed drastic

1 sanction could be substantiated) but rather requested an order
2 compelling disclosure. Accordingly, Defendants' request for
3 dismissal is **DENIED**, and shall not be discussed further herein.

4 PROCEDURAL BACKGROUND

5 Plaintiffs filed their complaint for damages on March 9,
6 2005. (Ct. Rec. 1). Defendants filed an answer to the complaint
7 on May 10, 2005. (Ct. Rec. 9). On June 24, 2005, the parties
8 consented to proceed before a United States Magistrate Judge.
9 (Ct. Rec. 12). On July 29, 2005, the Court held a scheduling
10 conference and generated a scheduling order. (Ct. Rec. 17). The
11 scheduling order does not set a date for the completion of the
12 Rule 26 initial disclosures. (Ct. Rec. 17).

13 On October 6, 2005, Defendants filed their first motion to
14 dismiss or, in the alternative, to compel complete initial
15 disclosures. (Ct. Rec. 18). Following that initial motion,
16 Plaintiffs submitted Supplemental Initial Disclosures to
17 Defendants. (Ct. Rec. 20). However, since the supplemental
18 disclosures apparently continued to not provide a calculation of
19 medical expenses and lost benefits, Defendants filed an amended
20 motion to dismiss or, in the alternative, to compel complete
21 initial disclosures on October 11, 2005. (Ct. Rec. 20).

22 On October 24, 2005, Plaintiffs filed an opposition to
23 Defendants' motion to dismiss or compel initial disclosures. (Ct.
24 Rec. 23). Plaintiffs' opposition contends that they have complied
25 with their duties under Fed. R. Civ. P. 26(a) by making their
26 initial disclosures based on the information reasonably available
27 to them. (Ct. Rec. 23).

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1 On October 27, 2005, Defendants filed a pleading entitled
2 "Defendants' Second Revised Motion to Dismiss or to Compel Initial
3 Disclosures." (Ct. Rec. 25). This reply to Plaintiffs'
4 opposition indicates that Defendants continue to seek an order
5 compelling Plaintiffs to provide complete initial disclosures,
6 including a computation of any category of damages claimed. (Ct.
7 Rec. 25). Although Plaintiffs provided a calculation for medical
8 bills and lost retirement income in their supplemental
9 disclosures, Defendants contend that Plaintiffs still have not
10 provided a calculation for lost benefits, other than the lost
11 retirement income. (Ct. Rec. 25, p. 2). Defendants no longer
12 request a calculation for Plaintiffs' medical expenses, as those
13 figures were apparently provided by way of Plaintiffs' second
14 supplemental initial disclosure. Defendants' current motion
15 requests only that Plaintiffs provide a calculation for
16 Plaintiffs' claimed lost benefits.

17 CONTENTIONS OF PARTIES

18 1. Defendants' Moving Arguments

19 Defendants contend that Plaintiffs' initial disclosures are
20 incomplete by failing to provide a calculation for lost benefits,
21 other than the lost retirement income.

22 Fed. R. Civ. P. 26(a)(1) directs that Plaintiffs must provide
23 a computation of any category of damages claimed, making available
24 for inspection and copying, as under Rule 34, the documents or
25 other evidentiary material, not privileged or protected, on which
26 such computation is based, including materials bearing on the
27 nature and extent of injuries suffered. (Ct. Rec. 20). Since

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1 the Plaintiffs failed to provide complete initial disclosures,
2 Defendants move for an order compelling Plaintiffs to provide
3 complete initial disclosures. (Ct. Rec. 20).

4 **2. Plaintiffs' Opposition**

5 Plaintiffs assert that they have complied with their duties
6 under Fed. R. Civ. P. 26(a), which provides that "a party must
7 make its initial disclosures based on the information then
8 reasonably available to it" (Ct. Rec. 23). Plaintiffs
9 indicate that they have made initial disclosures based on the
10 information reasonably available to them.

11 At the hearing on the instant motion, counsel for Plaintiffs
12 advised the Court that the lost benefits claimed, if any, would be
13 calculated by ascertaining the difference between the value of
14 Plaintiffs' current employment benefit package versus the value of
15 Plaintiffs' prior employment benefit package. Counsel for
16 Plaintiffs indicated they were in the process of determining this
17 valuation through an expert. Nevertheless, that information,
18 including the amounts alleged, had not been furnished to
19 Defendants by way of further supplemental initial disclosures at
20 the time of the hearing on the motion.

21 **3. Defendants' Reply**

22 In their reply papers, Defendants contend that, although
23 Plaintiffs provided a calculation for medical bills and for lost
24 retirement income in their supplemental disclosures, Plaintiffs
25 still have not provided a calculation for lost benefits, other
26 than the lost retirement income. Accordingly, Defendants argue
27 that Plaintiffs have still not complied with Fed. R. Civ. P.
28 26(a).

1 Defendants point out that the language of Fed. R. Civ. P.
2 26(a), cited by Plaintiffs in their opposition, does not excuse a
3 party from omitting information of claimed damages or allow a
4 party to refrain from disclosing a calculation of damages until an
5 expert calculates damages. The remainder of the sentence cited by
6 Plaintiffs reads as follows: ". . . and is not excused from making
7 its disclosures because it has not fully completed its
8 investigation of the case or because it challenges the sufficiency
9 of another party's disclosures or because another party has not
10 made its disclosures."

11 ANALYSIS & DISCUSSION

12 Fed. R. Civ. P. 37(a)(2)(A) authorizes a motion to compel
13 initial disclosures:

14 If a party fails to make a disclosure required by Rule
15 26(a), any other party may move to compel disclosure and
16 for appropriate sanctions. The motion must include a
17 certification that the movant has in good faith
conferred or attempted to confer with the party not
making the disclosure in an effort to secure the
disclosure without court action.

18 Fed. R. Civ. P. 26(a)(1)(C) addresses initial disclosures of
19 claimed damages and indicates as follows:

20 . . . a party must, without awaiting a discovery
21 request, provide to other parties:

22 (C) **a computation of any category of damages claimed by**
23 **the disclosing party**, making available for inspection
24 and copying as under Rule 34 the documents or other
evidentiary material, not privileged or protected from
disclosure, on which such computation is based,
including materials bearing on the nature and extent of
injuries suffered (Bold added.)

25 Fed. R. Civ. P. 26(a) further holds that, "[a] party must
26 make its initial disclosures based on the information then
27 reasonably available to it and is not excused from making its
28 disclosures because it has not fully completed its investigation

1 of the case or because it challenges the sufficiency of another
2 party's disclosures or because another party has not made its
3 disclosures."

4 An "evasive or incomplete disclosure . . . is to be treated
5 as a failure to disclose." Fed. R. Civ. P. 37(a)(3).

6 Fed. R. Civ. P. 37(c)(1) authorizes sanctions for failure to
7 make initial disclosures:

8 A party that without substantial justification fails to
9 disclose information required by Rule 26(a) . . . is
10 not, unless such failure is harmless, permitted to use
11 as evidence at a trial, at a hearing, or on a motion any
12 witness or information not so disclosed. In addition to
13 or in lieu of this sanction, the court, on motion and
14 after affording an opportunity to be heard, may impose
other appropriate sanctions. In addition to requiring
payment of reasonable expenses, including attorney's
fees, caused by the failure, these sanctions may include
any of the sanctions authorized under Rule 37(b)(2)(A),
(B), and (C) and may include informing the jury of the
failure to make the disclosure.

15 Here, Plaintiffs' supplemental initial disclosures provide
16 calculations for special damages. Specifically, Plaintiffs
17 indicate calculations for lost wages and lost retirement. (Ct.
18 Rec. 24-3). Correspondence from Plaintiffs' counsel to
19 Defendants' counsel, dated October 21, 2005, reveal that
20 Plaintiffs, by way of a second supplemental initial disclosure,
21 provided Defendants with Plaintiffs' medical bills from 2000 to
22 present and indicated their belief that the medical expenses did
23 not exceed \$1,000.00. (Ct. Rec. 24-4). However, Plaintiffs have
24 failed to provide a calculation of the value of their lost
25 benefits, other than lost retirement. Plaintiffs indicated in
26 their supplemental initial disclosures that "Mr. Teaforde is unable

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1 to calculate a value for his lost benefits at this point, but
2 claims them and will provide an expert calculation." (Ct. Rec.
3 24-3, p. 2).

4 Plaintiffs are not justified in their contention that they
5 are unable to calculate lost benefits. They cite Fed. R. Civ. P.
6 26(a)'s provision that a party "must make its initial disclosures
7 based on the information then reasonably available to it," but
8 fail to include the rest of the rule which holds that a party "is
9 not excused from making its disclosures because it has not fully
10 completed its investigation of the case"

11 Plaintiffs supplemental initial disclosures fail to
12 adequately calculate the valuation of their claimed lost benefits,
13 and their general statement that the calculation would be provided
14 in the future, following expert consultation, does not suffice for
15 purposes of Fed. R. Civ. P. 26(a). Accordingly, the undersigned
16 finds that Defendants' motion to compel further initial
17 disclosures must be granted, and that Plaintiff be compelled to
18 disclose a complete calculation of their claimed lost benefits
19 forthwith.

20 CONCLUSION

21 Having reviewed the arguments of the parties, this Court
22 finds that Defendants' are entitled to the disclosure of the
23 valuation of Plaintiffs' claimed lost benefits. Accordingly,

24 **IT IS ORDERED:**

25 1. Defendant's motion to compel complete initial
26 disclosures (Ct. Rec. 20) is **GRANTED**.

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IT IS SO ORDERED. The District Court Executive shall file this order and provide a copy to counsel for Plaintiffs and Defendants.

DATED this 7th day of November, 2005.

ORDER - 8